

CLOSED

**U.S. District Court  
SOUTHERN DISTRICT OF TEXAS (Houston)  
CRIMINAL DOCKET FOR CASE #: 4:18-mj-01819 All Defendants  
*Internal Use Only***

Case title: USA v. Smothermon

Date Filed: 11/07/2018

Other court case number: 1:18mj9091 New York Southern  
District Court – New York

Date Terminated: 11/08/2018

Assigned to: Magistrate Judge  
Dena Hanovice Palermo

**Defendant (1)**

**David Smothermon**  
*Secured 1,000,000 with 100,000  
Cash Deposit  
TERMINATED: 11/08/2018*

represented by **James M Kennedy**  
Bires Schaffer DeBorde  
712 Main Street  
Ste 2400  
Houston, TX 77002  
713-228-8500  
Fax: 713-228-0034  
Email: [JamesKennedy@BSDLawFirm.com](mailto:JamesKennedy@BSDLawFirm.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Retained*

**Pending Counts**

None

**Disposition**

**Highest Offense Level  
(Opening)**

None

**Terminated Counts**

None

**Disposition**

**Highest Offense Level  
(Terminated)**

None

**Complaints**

**Disposition**

18:1343 Wire Fraud

**Plaintiff****USA**

Date Filed	#	Page	Docket Text
11/07/2018	<u>1</u>	3	Copy of Complaint from the New York Southern District Court – New York Division 1:18mj9091 as to David Smothermon, filed.(kmurphyadi, 4) (Entered: 11/07/2018)
11/07/2018		31	Arrest (Rule 40) of David Smothermon. (kmurphyadi, 4) (Entered: 11/07/2018)
11/07/2018		30	***Set Hearing as to David Smothermon: Initial Appearance – Rule 40 set for 11/7/2018 at 10:00 AM before Magistrate Judge Dena Hanovice Palermo (kmurphyadi, 4) (Entered: 11/07/2018)
11/07/2018	<u>2</u>	32	Pretrial Services Report (Sealed) as to David Smothermon, filed. (jking, 4) (Entered: 11/07/2018)
11/07/2018		38	INITIAL APPEARANCE IN RULE 5(c)(3) Minute Entry for proceedings held on 11/7/2018 before Magistrate Judge Dena Hanovice Palermo as to David Smothermon. Defendant first appearance on Complaint from the New York Southern District Court 1:18mj9091 and advised of rights/charges. Defendant advises of retainment of counsel, Defendant appeared with counsel. Bond set, Secured 1,000,000. With \$100,000 Cash deposit, Defendant advised of conditions of release, Surety signature(s) required, Defendant to be released after bond perfected,. Appearances: AUSA Michael Kusin f/USA; James Kennedy (Retained) f/Deft.(ERO:Yes) (Interpreter: No) (Pretrial Officer: Sergio Garza) Bond executed and deft to be released, filed.(cfelchakadi, 4) (Entered: 11/08/2018)
11/07/2018	<u>3</u>	39	Secured Bond Entered as to David Smothermon in amount of \$ 1,000,000, Receipt # HOU084216. Bond Depositor: Angie Smothermon, filed. (cfelchak, 4) (Entered: 11/08/2018)
11/07/2018	<u>4</u>	41	ORDER Setting Conditions of Release ( Signed by Magistrate Judge Dena Hanovice Palermo) (Attachments: # <u>1</u> Unredacted attachment Conditions of Release) Parties notified. (cfelchak, 4) (Entered: 11/08/2018)
11/08/2018		47	RULE 5 Papers sent to Southern District of New York Division as to David Smothermon, filed.(cfelchak, 4) (Entered: 11/08/2018)

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--Case Participants:  
--Non Case Participants:  
--No Notice Sent:

Message-Id:29208683@txs.uscourts.gov  
Subject:Activity in Case 4:18-mj-01819 USA v. Smothermon Set/Reset Hearings  
Content-Type: text/html

**U.S. District Court**

**SOUTHERN DISTRICT OF TEXAS**

**Notice of Electronic Filing**

The following transaction was entered on 11/7/2018 at 8:45 AM CST and filed on 11/7/2018

**Case Name:** USA v. Smothermon

**Case Number:** 4:18-mj-01819

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**\*\*\*Set Hearing as to David Smothermon: Initial Appearance – Rule 40 set for 11/7/2018 at 10:00 AM before Magistrate Judge Dena Hanovice Palermo (kmurphyadi, 4)**

**4:18-mj-01819-1 Notice has been electronically mailed to:**

**4:18-mj-01819-1 Notice has not been electronically mailed to:**

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--Case Participants:  
--Non Case Participants:  
--No Notice Sent:

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Subject:Activity in Case 4:18-mj-01819 USA v. Smothermon Arrest - Rule 40  
Content-Type: text/html

**U.S. District Court**

**SOUTHERN DISTRICT OF TEXAS**

**Notice of Electronic Filing**

The following transaction was entered on 11/7/2018 at 8:43 AM CST and filed on 11/7/2018

**Case Name:** USA v. Smothermon

**Case Number:** 4:18-mj-01819

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**Arrest (Rule 40) of David Smothermon. (kmurphyadi, 4)**

**4:18-mj-01819-1 Notice has been electronically mailed to:**

**4:18-mj-01819-1 Notice has not been electronically mailed to:**

PS3

### PRETRIAL REPORT

District/Office <b>SOUTHERN DISTRICT OF TEXAS-Houston</b>	Charge(s) (Title, Section, and Description)  <b>Rule 5 - Southern District Of New York</b>  18 U.S.C. § 1343 and 2 Wire Fraud  Penalty Range: <i>Not more than 20 years imprisonment</i>
Judicial Officer United States Magistrate Judge Dena H. Palermo	
Docket Number (Year-Sequence No.-Deft. No.) 4:18-01819M-001	

### DEFENDANT

Name Smothermon, David	Employer BBD Construction (1/2 owner)		
Address: 2106 Orchard County Lane Houston, Texas 77062	Employer Address  Plano, TX		
Time at Address 1/29/2016	Time in Community 44.0 years	Monthly Income \$2,500	Time Unemployed N/A

### DEFENDANT HISTORY

#### 1. DEFENDANT HISTORY/RESIDENCE/FAMILY TIES:

David Smothermon, who reported his true name to be David Bruce Smothermon, age 48, informed he was born and raised in the greater Houston, Texas. He is a lifelong resident of the greater Houston, Texas, area with the exception of a four year period he lived in Nacogdoches, Texas, while attending college. **The defendant admitted possessing a United States passport and noted the arresting agents took possession of it. He admitted having last traveled to Cabo San Lucas, Baja California, Mexico two weeks ago and was arrested at the airport yesterday when he flew into Houston, Texas. He informed he travels to Cabo San Lucas, Mexico, four times per year as they own property there.** The defendant informed he lives at the aforementioned address with his wife and son in a four bedroom and four full and three half bath home owned by him and his wife. He informed he would return to live at his residence if released on bond. **The defendant informed his wife has a firearm at the home. The defendant informed he possesses a valid Texas Driver's License.**

The defendant advised his parents are married and he was raised by both. The defendant's mother, age 81, is a housewife and lives with the defendant's father in Friendswood, Texas. The defendant's father, age 82, is retired from NASA where he worked as an engineer. He stated his father currently suffers from Alzheimer's disease. The defendant has one biological sister, age 56, who is employed as a physical therapist assistant and lives in Friendswood, Texas. The defendant maintains weekly contact with his family.

The defendant is currently married to, Angela Lee Smothermon (nee: Austin), a 49-year-old United States citizen. They wed in February of 1994, in Harris County, Texas. The defendant's wife is a homemaker. The couple has one child, a 19-year-old son who lives with them. The son is currently enrolled in online courses ~~32~~

Smothermon, David

San Jacinto Community College and suffers from cerebral palsy. The defendant denied any other marriages or having fathered any other children.

The defendant reported he graduated from Stephen F. Austin University in Nacogdoches, Texas, in 1992 with a Bachelor of Business Degree in Finance and earned a Master's Degree in Finance from the University of St. Thomas in Houston, Texas, in 1998.

The defendant's wife corroborated the defendant's personal information. She stated she remains supportive of the defendant and would allow the defendant to live with her in their home if released on bond. She is willing to serve as a cosigner, if required by the Court. A criminal record query reflects the defendant's wife has no known criminal history.

According to the Harris County Appraisal District website, records reflect the owner of record for the property located at 2106 Orchard Country Lane, Houston Texas, 77062 is David B. Smothermon and the 2018 appraised value is \$1,009,177. Mr. Smothermon has owned this home since January 29, 2016.

## 2. EMPLOYMENT HISTORY / FINANCIAL RESOURCES:

### Employed/Unemployed History:

Start Date	End Date	Employer Name/ Unemployed	Address	Monthly Income	Time in Status/ Hours a Week
11/07/2014		BBD Construction	Plano, TX	\$2,500.00 \$33,000.00	4 years/
Unspecified		Craft Draft House LLC	Houston, TX	\$20,833.33	4 years/

Mr. Smothermon reported he owns half interest in the aforementioned businesses as an investor. He reported his income varies. Prior to this, he was employed by Trammo in Houston, Texas, for eleven years ending in August of 2016, and terminated his employment as this relates to the instant federal offense.

### Finances:

Assets	Amount	Liabilities	Amount
Residence-2106 Orchard Country Lane, Houston, Texas	\$1,009,177.00	Personal Loan-"LMA loan-Structured loan"	\$13,000,000.00
Vehicle-2016 Mercedes G63	\$100,000.00	Credit Cards	\$75,000.00
Vehicle-2018 Ford Raptor	\$60,000.00	Mortgage-2106 Orchard Country Lane, Houston, Texas	\$825,000.00
Vehicle-2017-Chevrolet Colorado	\$35,000.00		
Vehicle-2009 Yamaha VStar 950	\$2,000.00		



Smothermon, David

Yamaha Boat	\$15,000.00		
Personal Checking Account	\$75,000.00		
Securities-Merryl Lynch Account	\$23,000,000.00		
Residence-Hitchcock, Texas	\$900,000.00		
Residence-New Braunfels, Texas	\$400,000.00		
Residence-Cabo San Lucas, Mexico	\$900,000.00**		
Residence-Cabo San Lucas, Mexico	\$2,000,000.00		
Land-Cabo San Lucas, Mexico	\$900,000.00**		
Cash	\$5,000.00		
Personal effects	\$200,000.00		
<b>Total</b>	<b>\$29,601,177</b>	<b>Total</b>	<b>\$13,900,000</b>
<b>Estimated Net Worth: \$15,701,177*</b>			

<b>Monthly Income</b>	<b>Amount</b>	<b>Expenses</b>	<b>Amount</b>
Net Income	\$25,000.00	Home/Mortgage	\$2,700.00
Rental Income from home in Cabo San Lucas, Mexico	\$4,000.00	Utilities	\$1,500.00
Bond Interest Income	\$15,000.00	Groceries and Supplies	\$800.00
		Auto Insurance	\$350.00
		Cellular Phone	\$600.00
		Cable	\$200.00
		Alarm Service	\$40.00
		Landscaping	\$400.00
		Pool Maintenance	\$400.00
		Gas	\$300.00
		LMA Loan Payment	\$33,000.00
<b>Total</b>	<b>\$44,000</b>	<b>Total</b>	<b>\$40,290</b>
<b>Estimated Monthly Cash Flow: \$3,710</b>			

\*Mr. Smothermon reported his interest in the ownership of both businesses noted above is worth approximately \$3,000,000 to \$4,000,000.

\*\*The defendant informed he is currently selling these properties.

Smothermon, David

The defendant informed he pays the credit cards in full every month.

The defendant's wife corroborated the defendant's employment history but she did not know the value of their assets nor the living expenses since the defendant was the one who handled their finances.

### 3. HEALTH:

#### Physical Health:

The defendant stated he is in good physical health with no medical problems reported.

#### Mental Health:

The defendant reported he was diagnosed with "severe depression and extreme anxiety" in 2016 by his general practitioner doctor in Houston, Texas. He was prescribed two medications for his condition and last took the medications over a year ago. He reported in 2016 he had thought about suicide due to the instant offense, his father's Alzheimer's disease diagnosis and his son's cerebral palsy condition. He never attempted suicide, only had thoughts about it.

#### Substance Abuse History:

The defendant reported the following substance abuse, beginning at age 22:

Drug Name	Frequency Used	Last Used
Alcohol	Occasional (in moderation)	1 week ago
Cannabinoids	occasional	15 years ago
Prescription Opiates	occasional	2 years ago

#### Treatment History

The defendant did not report any history of substance abuse treatment.

The defendant's wife corroborated the defendant's physical health and that he was diagnosed with "depression" and "anxiety." She did not know any information about his suicidal thoughts and did not know of any illegal drug use.

### 4. PRIOR RECORD:

Local, State, Federal records revealed the following criminal history:

<u>Date of Arrest</u>	<u>Agency</u>	<u>Charge</u>	<u>Disposition</u>
04/30/2013 (Age 43)	Texas Department of Public Safety; Galveston, TX; Case No.: MD-0334749	Obstruct Highway Passageway (misdemeanor)	12/02/2013: 9 months deferred adjudication probation, \$300 fine. 03/27/2015: Probation expired.
The defendant was originally charged with driving while intoxicated, but was convicted of the aforementioned offense.			



Smothermon, David

**5. ASSESSMENT OF NONAPPEARANCE:**

The defendant poses a risk of nonappearance for the following reasons:

1. Offense Charged
2. Mental Health History
3. Substance Abuse History
4. Ties to a Foreign Country-Owns property in Mexico.

**6. ASSESSMENT OF DANGER:**

There are no known factors indicating the defendant poses a risk of danger to the community.

**7. RECOMMENDATION - ADDITIONAL CONDITIONS OF RELEASE**

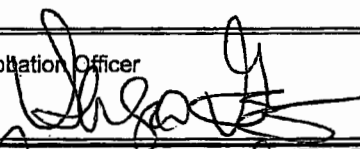
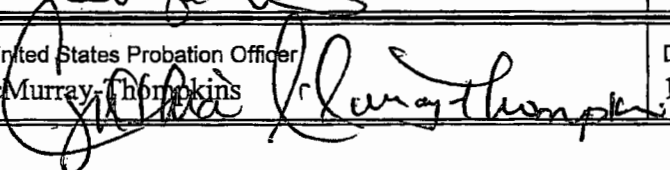
The following bond and conditions are recommended to address the issues of nonappearance and danger to the community:

1. \$75,000 Unsecured Bond.
2. Pretrial Services Supervision.
3. Maintain or actively seek verifiable employment.
4. Surrender U.S. Passport to the United States Probation Office.
5. Obtain no passport.
6. Travel restricted to Southern District of Texas with permission to travel to the Southern District of New York, New York City Division for court related matters.
7. Avoid all contact with co-defendant, victims or potential victims.
8. Submit to a mental health evaluation and/or participate in a mental health treatment program as directed by the U.S. Probation Office.
9. Refrain from possessing a firearm, destructive device, or other dangerous weapons.
10. Refrain from excessive use of alcohol.
11. Refrain from use or unlawful possession of a narcotic drug or other controlled substance unless prescribed by a licensed medical practitioner.
12. Report Contact with Law Enforcement.
13. The defendant will incur the costs associated with any services related to mental health evaluation or treatment based on the ability to pay as determined by U.S. Probation.

Smothermon, David

**Special Conditions**

14. The defendant is not to obtain employment at any financial institution, brokerage firm or be employed in any capacity w conduct alleged in the federal complaint. ✓

United States Probation Officer Sergio Garza 	Date 11/07/2018
Supervising United States Probation Officer Cynthia McMurray-Thompkins 	Date 11/07/2018 at 1:20 pm

MIME-Version:1.0  
From:DCECF\_LiveDB@txs.uscourts.gov  
To:DC\_Notices@localhost.localdomain  
Bcc:  
--Case Participants: James M Kennedy (biviana@bsdlawfirm.com, jameskennedy@bsdlawfirm.com, jessica@bsdlawfirm.com)  
--Non Case Participants:  
--No Notice Sent:  
  
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Subject:Activity in Case 4:18-mj-01819 USA v. Smothermon Initial Appearance - Rule 5(c)(3)  
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**U.S. District Court**

**SOUTHERN DISTRICT OF TEXAS**

**Notice of Electronic Filing**

The following transaction was entered on 11/8/2018 at 9:31 AM CST and filed on 11/7/2018

**Case Name:** USA v. Smothermon  
**Case Number:** 4:18-mj-01819  
**Filer:**  
**Document Number:** No document attached

**Docket Text:**

**INITIAL APPEARANCE IN RULE 5(c)(3) Minute Entry for proceedings held on 11/7/2018 before Magistrate Judge Dena Hanovice Palermo as to David Smothermon. Defendant first appearance on Complaint from the New York Southern District Court 1:18mj9091 and advised of rights/charges. Defendant advises of retainment of counsel, Defendant appeared with counsel. Bond set, Secured 1,000,000. With \$100,000 Cash deposit, Defendant advised of conditions of release, Surety signature(s) required, Defendant to be released after bond perfected,. Appearances: AUSA Michael Kusin f/USA; James Kennedy (Retained) f/Deft.(ERO:Yes) (Interpreter: No) (Pretrial Officer: Sergio Garza) Bond executed and deft to be released, filed.(cfelchakadi, 4)**

**4:18-mj-01819-1 Notice has been electronically mailed to:**

James M Kennedy &nbsp; JamesKennedy@BSDLawFirm.com, Biviana@BSDLawFirm.com, Jessica@bsdlawfirm.com

**4:18-mj-01819-1 Notice has not been electronically mailed to:**

Hou 84216

RECEIVED  
 UNITED STATES MARSHAL: UNITED STATES DISTRICT COURT  
 2018 NOV -7 PM 3:16 SOUTHERN DISTRICT OF TEXAS  
 HOUSTON DIVISION  
 SOUTHERN DIST. S/TX  
 UNITED STATES OF AMERICA

vs.

Case No. 4:18-mj-1819

DAVID SMOTHERMON,

Defendant,

**APPEARANCE BOND****Defendant's Agreement**

I, David Smothermon (*defendant*), agree to follow every order of this court, or any court that considers this case, and I further agree that this bond may be forfeited if I fail:

- ( ☒ ) to appear for court proceedings;
- ( ☒ ) if convicted, to surrender to serve a sentence that the court may impose; or
- ( ☒ ) to comply with all conditions set forth in the Order Setting Conditions of Release.

**Type of Bond**

- ( ☐ ) (1) This is a personal recognizance bond.
- ( ☐ ) (2) This is an unsecured bond of \$\_\_\_.
- ( ☒ ) (3) This is a secured bond of \$1,000,000., secured by:

- ( ☒ ) (a) \$100,000., in cash deposited with the court.

Conserv wife

- ( ☐ ) (b) the agreement of the defendant and each surety to forfeit the following cash or other property (*describe the cash or other property, including claims on it — such as a lien, mortgage, or loan — and attach proof of ownership and value*): DATED this 7th day of November, 2018.

If this bond is secured by real property, documents to protect the secured interest may be filed of record.

- ( ☐ ) (c) a bail bond with a solvent surety (*attach a copy of the bail bond, or describe it and identify the surety*):

### Forfeiture or Release of the Bond

*Forfeiture of the Bond.* This appearance bond may be forfeited if the defendant does not comply with the above agreement. The court may immediately order the amount of the bond surrendered to the United States, including the security for the bond, if the defendant does not comply with the agreement. At the request of the United States, the court may order a judgment of forfeiture against the defendant and each surety for the entire amount of the bond, including interest and costs.

*Release of the Bond.* The court may order this appearance bond ended at any time. This bond will be satisfied and the security will be released when either: (1) the defendant is found not guilty on all charges, or (2) the defendant reports to serve a sentence.

### Declarations

*Ownership of the Property.* I, the defendant – and each surety – declare under penalty of perjury that:

- (1) all owners of the property securing this appearance bond are included on the bond;
- (2) the property is not subject to claims, except as described above; and
- (3) I will not sell the property, allow further claims to be made against it, or do anything to reduce its value while this appearance bond is in effect.

*Acceptance.* I, the defendant – and each surety – have read this appearance bond and have either read all the conditions of release set by the court or had them explained to me. I agree to this Appearance Bond.

I, the defendant – and each surety – declare under penalty of perjury that this information is true.  
(See 28 U.S.C. § 1746.)

Date: X 11-7-18

X DBFZ  
Defendant's signature

X Angie Smotherman  
Surety/property owner – printed name

Angie Smotherman  
Surety/property owner – signature and date

\_\_\_\_\_  
Surety/property owner – printed name

\_\_\_\_\_  
Surety/property owner – signature and date

\_\_\_\_\_  
Surety/property owner – printed name

\_\_\_\_\_  
Surety/property owner – signature and date

Date: 11. 7. 18

CLERK OF COURT  
Cal  
Signature of Clerk or Deputy Clerk

Approved.

Date: 11-7-18

Dene P  
Judge's signature

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**ENTERED**

November 08, 2018

David J. Bradley, Clerk

UNITED STATES OF AMERICA

Plaintiff,

vs.

DAVID SMOTHERMON,

Defendant.

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CRIMINAL 4:18-mj-1819

**ORDER SETTING CONDITIONS OF RELEASE**

IT IS ORDERED that the defendant's release is subject to these conditions:

- (1) The defendant must not violate federal, state, or local law while on release.
- (2) The defendant must cooperate in the collection of a DNA sample if it is authorized by 42 U.S.C. § 14135a.
- (3) The defendant must advise the court or the pretrial services office or supervising officer in writing before making any change of residence or telephone number.
- (4) The defendant must appear in court as required and, if convicted, must surrender as directed to serve a sentence that the court may impose.

The defendant must appear on November 7, 2018, at TBD by Pretrial Services  
*Date and Time*

at Pretrial Services, 515 Rusk Street, 6th Floor, Houston, Texas 77002  
*Place*

If blank, defendant will be notified of next appearance.

- (5) The defendant must sign an Appearance Bond, if ordered.



**ADDITIONAL CONDITIONS OF RELEASE**

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

( ☐ ) (6) The defendant is placed in the custody of:

Person or organization

Address (only if above is an organization)

City and state

Tel. No.

who agrees to (a) supervise the defendant, (b) use every effort to assure the defendant's appearance at all court proceedings, and (c) notify the court immediately if the defendant violates a condition of release or is no longer in the custodian's custody.

Signed:

Custodian

Date

( ☒ ) (7) The defendant must:( ☒ ) (a) submit to supervision by and report for supervision to the Pretrial Services telephone number \_\_\_\_\_, no later than \_\_\_\_\_( ☒ ) (b) continue or actively seek employment.( ☐ ) (c) continue or start an education program.( ☒ ) (d) surrender any passport to: Pretrial Services( ☒ ) (e) not obtain a passport or other international travel document.( ☒ ) (f) abide by the following restrictions on personal association, residence, or travel: Southern District of Texas with permission to travel to the Southern District of New York, New York City Division for court related matters( ☒ ) (g) avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution, including: ~~Co-Defendants~~ Co-Conspirators( ☒ ) (h) get medical or psychiatric treatment: Submit to a mental health evaluation and/or participate in a mental health treatment program as directed by the U.S. Probation Office. - Def to pay costs as per PTS determination( ☐ ) (i) return to custody each \_\_\_\_\_ at \_\_\_\_\_ o'clock after being released at \_\_\_\_\_ o'clock for employment, schooling, or the following purposes:( ☐ ) (j) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary.( ☒ ) (k) not possess a firearm, destructive device, or other weapon.( ☒ ) (l) not use alcohol ( ☐ ) at all ( ☒ ) excessively.( ☒ ) (m) not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.( ☐ ) (n) submit to testing for a prohibited substance if required by the pretrial services office or supervising officer. Testing may be used with random frequency and may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must not obstruct, attempt to obstruct, or tamper with the efficiency and accuracy of prohibited substance screening or testing.( ☐ ) (o) participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by the pretrial services office or supervising officer.( ☐ ) (p) participate in one of the following location restriction programs and comply with its requirements as directed.( ☐ ) (i) **Curfew.** You are restricted to your residence every day ( ☐ ) from \_\_\_\_\_ to \_\_\_\_\_, or ( ☐ ) as directed by the pretrial services office or supervising officer; or( ☐ ) (ii) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities approved in advance by the pretrial services office or supervising officer; or( ☐ ) (iii) **Home Incarceration.** You are restricted to 24-hour-a-day lock-down at your residence except for medical necessities and court appearances or other activities specifically approved by the court.( ☐ ) (q) submit to location monitoring as directed by the pretrial services office or supervising officer and comply with all of the program requirements and instructions provided.( ☒ ) You must pay all or part of the cost of the program based on your ability to pay as determined by the pretrial services office or supervising officer.( ☒ ) (r) report as soon as possible, to the pretrial services office or supervising officer, every contact with law enforcement personnel, including arrests, questioning, or traffic stops.( ☒ ) (s) The defendant is not to obtain employment at any financial institution, brokerage firm or be employed in any capacity w conduct alleged in the federal complaint.

**ADVICE OF PENALTIES AND SANCTIONS**

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond, and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (*i.e.*, in addition to) to any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more – you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years – you will be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony – you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor – you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of the Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.


X DB82

Defendant's Signature

**Directions to the United States Marshal**

- ( ☐ ) The defendant is **ORDERED** released after processing.
- ( ☒ ) The United States marshal is **ORDERED** to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. If still in custody, the defendant must be produced before the appropriate judge at the time and place specified.

Signed on November 7, 2018, at Houston, Texas.

  
Dena Hanovice Palermo  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

DAVID SMOTHERMON,

Defendant.

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§

CRIMINAL 4:18-mj-1819

**ORDER SETTING CONDITIONS OF RELEASE**

IT IS ORDERED that the defendant's release is subject to these conditions:

- (1) The defendant must not violate federal, state, or local law while on release.
- (2) The defendant must cooperate in the collection of a DNA sample if it is authorized by 42 U.S.C. § 14135a.
- (3) The defendant must advise the court or the pretrial services office or supervising officer in writing before making any change of residence or telephone number.
- (4) The defendant must appear in court as required and, if convicted, must surrender as directed to serve a sentence that the court may impose.

The defendant must appear on November 7, 2018, at TBD by Pretrial Services  
*Date and Time*

at Pretrial Services, 515 Rusk Street, 6th Floor, Houston, Texas 77002  
*Place*

If blank, defendant will be notified of next appearance.

- (5) The defendant must sign an Appearance Bond, if ordered.



### ADDITIONAL CONDITIONS OF RELEASE

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

- ( ☐ ) (6) The defendant is placed in the custody of:

Person or organization

Address (only if above is an organization)

City and state

Tel. No.

who agrees to (a) supervise the defendant, (b) use every effort to assure the defendant's appearance at all court proceedings, and (c) notify the court immediately if the defendant violates a condition of release or is no longer in the custodian's custody.

Signed:

Custodian

Date

- ( ☒ ) (7) The defendant must:

- ( ☒ ) (a) submit to supervision by and report for supervision to the Pretrial Services telephone number \_\_\_\_\_, no later than \_\_\_\_\_.
- ( ☒ ) (b) continue or actively seek employment.
- ( ☐ ) (c) continue or start an education program.
- ( ☒ ) (d) surrender any passport to: Pretrial Services
- ( ☒ ) (e) not obtain a passport or other international travel document.
- ( ☒ ) (f) abide by the following restrictions on personal association, residence, or travel: Southern District of Texas with permission to travel to the Southern District of New York, New York City Division for court related matters
- ( ☒ ) (g) avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution, including: Co-Defendants Co-Inspirators
- ( ☒ ) (h) get medical or psychiatric treatment: Submit to a mental health evaluation and/or participate in a mental health treatment program as directed by the U.S. Probation Office. - Def to pay costs as per PTS determination
- ( ☐ ) (i) return to custody each \_\_\_\_\_ at \_\_\_\_\_ o'clock after being released at \_\_\_\_\_ o'clock for employment, schooling, or the following purposes:
- ( ☐ ) (j) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary.
- ( ☒ ) (k) not possess a firearm, destructive device, or other weapon.
- ( ☒ ) (l) not use alcohol ( ☐ ) at all ( ☒ ) excessively.
- ( ☒ ) (m) not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.
- ( ☐ ) (n) submit to testing for a prohibited substance if required by the pretrial services office or supervising officer. Testing may be used with random frequency and may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must not obstruct, attempt to obstruct, or tamper with the efficiency and accuracy of prohibited substance screening or testing.
- ( ☐ ) (o) participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by the pretrial services office or supervising officer.
- ( ☐ ) (p) participate in one of the following location restriction programs and comply with its requirements as directed.
- ( ☐ ) (i) **Curfew.** You are restricted to your residence every day ( ☐ ) from \_\_\_\_\_ to \_\_\_\_\_, or ( ☐ ) as directed by the pretrial services office or supervising officer; or
- ( ☐ ) (ii) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities approved in advance by the pretrial services office or supervising officer; or
- ( ☐ ) (iii) **Home Incarceration.** You are restricted to 24-hour-a-day lock-down at your residence except for medical necessities and court appearances or other activities specifically approved by the court.
- ( ☐ ) (q) submit to location monitoring as directed by the pretrial services office or supervising officer and comply with all of the program requirements and instructions provided.
- ( ☒ ) (r) You must pay all or part of the cost of the program based on your ability to pay as determined by the pretrial services office or supervising officer.
- ( ☒ ) (r) report as soon as possible, to the pretrial services office or supervising officer, every contact with law enforcement personnel, including arrests, questioning, or traffic stops.
- ( ☒ ) (s) The defendant is not to obtain employment at any financial institution, brokerage firm or be employed in any capacity w conduct alleged in the federal complaint.

**ADVICE OF PENALTIES AND SANCTIONS**

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond, and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (*i.e.*, in addition to) to any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation; tamper with a witness, victim, or informant; retaliate or attempt to retaliate against a witness, victim, or informant; or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more – you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years – you will be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony – you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor – you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of the Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.

X DBSL

2106 Orchard Country Ln  
Houston, TX 77062

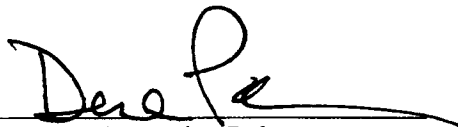
Defendant's Signature

City and State

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Dena Hanovice Palermo  
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